



CEA(R)

Comisión Española
de Ayuda al Refugiado

GIDELINES

CONCERNING PERSONS REQUIRING INTERNATIONAL PROTECTION IN MOROCCO

Thanks to



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INTRODUCTION:

Various reasons could lead a person to leave their country for another, including war, persecution, natural disaster or the prospect of a better quality of life. In any case, international law very clearly distinguishes between individuals who have been forced to flee their countries of origin and those who have left their country of their own free will in search of better living conditions. It is by means of an asylum procedure that refugee status is determined.

People displaced for economic reasons do not forfeit the protection of their country of origin. Refugees, however, leave their countries of origin because their safety is threatened there and their countries are no longer willing or able to protect them. Although States are free to admit individuals who have left their own countries in order to improve their living conditions, they are also obliged to protect any refugees present on their territory.

Concerned by the refugee crisis, the international community has, for humanitarian reasons, started to take responsibility for the protection of refugees. These efforts have led to the creation of the post of United Nations High Commissioner for Refugees (*UNHCR*) and the adoption of the *Statute of the Office of UNHCR* in 1950 (hereinafter the 1950 Statute). The following year, the *1951 Convention relating to the Status of Refugees* (hereinafter the 1951 Convention) was adopted by the General Assembly of the United Nations. Alongside the 1967 Protocol, this convention remains the keystone of the international legal framework for the protection of refugees around the world.

The purpose of these guidelines is:

- To provide a better understanding of the legislative framework regulating the rights of refugees and asylum seekers
- To provide a comprehensive understanding of the universal rights of these categories and of the consequences of having recognised refugee status
- To get to know the key actors responsible for the asylum procedures and the general situation of refugees
- To familiarise with the RSD procedures

LEGAL FRAMEWORK OF THE DEFINITION OF “REFUGEE”

A - Definitions of “refugee” in international instruments

The primary definition of “refugee” is that contained in the 1951 Convention. The 1967 Protocol subsequently lifted the geographical and temporal restrictions imposed by the 1951 Convention, whereby refugee status had largely been restricted to European victims of events occurring prior to 1 January 1951.

Key point no. 1 **What is a refugee?**

The concept of Refugee is well constituted in the **1951 Convention and its supplementary 1967 Protocol relating to the Status of Refugees, which constitute the primary instruments on international refugee law. A Refugee is therefore a person who:**

- *Has a well-founded fear of being persecuted owing to his*
 - *Race,*
 - *Religion,*
 - *Nationality,*
 - *Membership of a particular social group, or*
 - *Political opinion;*
 - *Is outside the country of his nationality, and*
- *Is unable or unwilling to avail himself of the protection of that country or return to it for fear of persecution.*

The definition of “refugee” contained in the 1951 Convention comprises:

- Inclusion clauses, which establish the criteria used to determine if a person is deemed to be a refugee. These clauses constitute the positive grounds on which a person’s eligibility for refugee status is determined;
- Exclusion clauses, which refuse refugee status to any person who satisfies the criteria defined in these clauses, on the grounds that he does not require or deserve international protection (see Key point no. 3); and
- Cessation clauses, which describe the conditions under which refugee status ceases to apply because it is no longer necessary or justified (see Key point no. 4).

Article 1A(2) of the 1951 Convention mentions the inclusion criteria, stipulating that a refugee is a person who:

«...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.»

This provision lists the five criteria that must be fulfilled before a person may be recognised as a refugee:

- Well-founded fear;
- Persecution;
- Reasons relating to race, religion, nationality, political opinion or membership of a particular social group;
- Being outside the country of one's nationality/former habitual residence;
- Being unable or unwilling to avail oneself of the protection of this country or to return to it, owing to a fear of being persecuted.

These criteria are explained below.

1- Well-founded fear

The person concerned must have good reasons for being fearful of returning to his country. The following indicators are used to determine if the fear is well-founded:

- The personal circumstances of the applicant (including background, experiences, personality and family history)
- The objective situation in the country of origin (such as the political/social conditions, respect for human rights and legislation)
- The experiences of the applicant's family members and/or of other persons with a comparable profile may also be useful.
- In cases where the applicant fears that he will be harmed by non-State actors, it must also be determined if the State is able and willing to provide protection for the applicant. A State may not be capable of offering sufficient protection to its citizens during times of war or other serious turmoil, or when it does not possess control of part of its territory.

The applicant's fears may be deemed well-founded if there is a reasonable possibility that he would be exposed to harm if he were returned to his country of origin or country of former habitual residence.

2- Persecution

The concept of «persecution» is not defined in the 1951 Convention or in any other international instrument. Article 33 of the 1951 Convention allows us to deduce that a threat to life or physical freedom constitutes persecution, as does any other serious human rights violation. The introductory note of the 1951 Convention refers to international human rights standards, which must be enjoyed by all persons, regardless of their nationality.

Not all human rights violations or cases of discrimination or harassment are serious enough to be considered forms of persecution. Discrimination can constitute persecution if it is associated with a protected right (such as religious freedom) and if the type of persecution is seen to be recurrent, provided that it reaches a certain degree of severity for the person concerned. The threshold of persecution is clearly reached if the applicant's enjoyment of his fundamental rights is significantly restricted. Moreover, measures of discrimination which, when considered separately, would not amount to persecution, may cause a situation to become intolerable for the applicant when considered cumulatively. Such a situation would be considered persecution on «cumulative grounds».

However, persecution is not limited to human rights violations, but also encompasses other types of serious harm or intolerable situations.

3- Grounds of the 1951 Convention – the «nexus» requirement

The definition of “refugee” contained in the 1951 Convention stipulates that a person is only eligible for refugee status under the Convention if he fears persecution owing to one or more of the five reasons listed in Article 1A(2). This criterion is often referred to as the “nexus” requirement. It is satisfied if the grounds under the Convention consist of a factor that effectively contributes to persecution, without necessarily being the only or even the dominant cause.

3-1 Race

«Race» should be interpreted in the broad sense, as being any distinctive ethnic characteristic, be it real or perceived as such. The refusal of citizenship and the loss of rights as a direct result of this represent another form of persecution that is often based on race.

3-2 Religion

Freedom of religion – which covers all belief systems – is a fundamental human right. It includes the right to have or not to have, to exercise and to change one's religion. Persecution associated with religion include the following situations:

- Restrictions on the exercise of religious freedom, such as the prohibition of membership of a religious community or of following religious instruction;

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- Serious discrimination as a result of religious practice or membership of a particular religious community;
 - Forced conversion or forced compliance with religious practices, provided the repercussions of these measures are sufficiently serious for the person concerned.

3-3 Nationality

«Nationality» as grounds for refugee status is not to be understood only as “citizenship”. It refers also to membership of groups of people collectively defined by their actual or perceived ethnic, religious, cultural or linguistic identity, regardless of whether or not this difference is legally constituted.

Stateless people – that is to say, people with no nationality in the more restricted sense of “citizenship” – may avail themselves of international protection if they have been deprived of citizenship based on one of the reasons listed in the 1951 Convention.

3-4 Membership of a particular social group

This basis under the 1951 Convention applies when an applicant belongs to a group of people who all possess a common characteristic (other than the risk of persecution). This characteristic may be:

- **Innate:** such as sex, race, caste, kinship ties, language or sexual orientation;
- **Unchangeable:** or example, because it is connected with the person’s past, such as being a former soldier, a former trade unionist or a former landowner; or
- **Otherwise fundamental to identity,** conscience or the exercise of one’s human rights, whose nature requires that no expectation must be placed on the person in question to change or reject the characteristic.

Sexual orientation, identity and gender expression are also recognised as a basis for application under the 1951 Convention, on the grounds of “membership of a particular social group”, even if certain individual cases may also be recognised on other grounds.

Family is one of the most obvious examples of a particular social group. Applications for refugee status may also be submitted if the family members of political activists or of members of the opposition have become the targets of persecution as a way of punishing the activists or members of the opposition or of forcing them to yield or cease their activities.

Key point no. 2

Gender as a determining factor of the application

«Gender-related persecution» encompasses a variety of possible applications. These generally involve acts of sexual violence, domestic violence, forced family planning, female genital mutilation, sexual orientation, etc. Applications of this kind can combine forms of persecution (such as persecution caused by sexual violence) with grounds for persecution (such as persecution as a result of deviation from an assigned gender role). The commonality between these applications is the fact that gender is a relevant factor in evaluating applications.

In its *Gender-Related Persecution Guidelines*, UNHCR explains how to examine gender-related applications in the light of the five criteria given under the 1951 Convention. According to these guidelines, gender-related applications can come under any of the five criteria.

As a result, the examination of such applications must not be restricted to grounds of «membership of a particular social group». The challenge facing those who make decisions concerning applications is therefore to ascertain how gender is relevant to each of the five criteria. When examining gender-related applications, officials must, for example, bear in mind that certain actions and situations affecting women, which often appear to be of a purely private and personal nature, can actually be ***profoundly political and must, therefore, be considered as relevant to the criterion*** «political opinion».

For more information, see the Gender-Related Guidelines of UNHCR.

3-5 Political opinion

The concept of «political opinion» as grounds for refugee status recognition must be interpreted in the broad sense and encompass all opinions relating to issues in which the State apparatus, the government or society is involved.

Simply having a political opinion that differs from that of the government is not in itself a basis for a refugee status application. The principal concern is to determine if the applicant is expressing opinions that are not tolerated by the authorities or by the community (or are perceived as such), and if he has a well-founded reason to fear persecution as a result.

4- Being outside one's country of nationality or country of former habitual residence

A person can only be a refugee if he is outside his country of nationality or, in the case of a stateless person, outside his country of former habitual residence.

The 1951 Convention does not require the reason for applicants leaving their country of origin or former habitual residence to be a well-founded fear of persecution; the grounds for refugee status can arise once the person concerned is already outside his country. In such situations, the person can become a refugee while he is in his host country (refugee «sur place»).

5- Being unable or, owing to such fear, being unwilling to avail oneself of the protection of that country or to return to it

If the fear of being persecuted expressed by the applicant comes from non-state actors and is restricted to a certain part of the country, outside which the alleged harm cannot materialise, it may be appropriate to examine the possibility of transferring the applicant to another part of his country of origin, where he can request protection from the state. This option is often referred to as the «internal flight or relocation alternative». Where this option exists, the applicant may not be eligible for the international protection afforded to refugees.

Key point no. 3

Definition of “refugee” – Exclusion clauses

- Persons who do not require international protection:

Articles 1D and 1E of the 1951 Convention define the circumstances under which persons satisfying the criteria required to enjoy the status of refugee, under the inclusion clauses, are refused this status, because they **do not require international protection. These provisions apply to:**

- Persons enjoying protection of or assistance from a United Nations institution other than UNHCR.
- Persons who are not deemed to require international protection because the authorities of their country of residence have granted them the rights and obligations associated with nationality of this country.

- Persons who do not deserve international protection:

Article 1F of the 1951 Convention denies refugee status to those who **do not deserve it because they are responsible for certain serious acts. This provision applies when there are serious reasons for believing that a person:**

- Has committed a crime against peace, a war crime or a crime against humanity;

- Has committed a serious common law crime outside the host country before being admitted as a refugee;
- Is guilty of wrongdoing contrary to the purposes and principles of the United Nations.

The argument for the exclusion clauses is that certain acts are of such severity that those who have committed them should not be protected under the terms of the 1951 Convention. The grounds for denying an individual refugee status are exhaustively defined in Article 1F; no other criteria may be applied. In view of their nature, cases to which Article 1F applies raise some complex questions and call for meticulous attention and examination.

Given the severe consequences of exclusion for the individual concerned, Article 1F must be applied restrictively. Applicants should not be automatically refused refugee status simply because the provisions of Article 1F apply to the head of his household. Each family member has the right to an individual examination of his eligibility for refugee status.

Key point no.4

Conditions under which refugee status ceases to apply (Cessation Clauses)

Under Article 1C of the 1951 Convention, refugee status shall cease to apply where the person concerned:

- Has voluntarily re-availed himself of the protection of his country of nationality;
- Having lost his nationality, has voluntarily reacquired it;
- Has acquired a new nationality, and enjoys the protection of the country of his new nationality;
- Has voluntarily re-established himself in the country which he left owing to fear of persecution;
- Can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;
- Being a person who has no nationality, can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his former habitual residence.

Because of its very nature, cessation may only take place once a person has been recognised as a refugee. The cessation clauses apply if international protection is no longer necessary or justified.

The reasons enumerated in Article 1C are exhaustive. The first four

are concerned with voluntary behaviour of the refugee, while the final two concern the situation in the country of origin. The latter are often referred to as «ceased circumstance» cessation clauses. The cessation of refugee status for these reasons arises due to a fundamental, durable and real change in the situation in the country of origin. A change is only deemed to be real if it dispels the reasons for fearing persecution.

«Ceased circumstance» cessation clauses may apply to an entire group of refugees, since it is probable that certain individuals will experience the consequences of fundamental change in their country of origin.

B - Definitions of “refugee” in regional instruments relating to refugees

The definition of “refugee” in the 1951 Convention is supplemented by regional instruments relating to refugees, including the OAU Convention Governing Specific Aspects of Refugee Problems in Africa of 1969 (hereinafter the OAU Convention of 1969) and the Cartagena Declaration on Refugees of 1984 (hereinafter the 1984 Cartagena Declaration). These two instruments stipulate that people who flee from indiscriminate threats resulting from the situation prevailing in their country of origin may also be recognised as a refugee under certain circumstances.

1- OAU Convention of 1969

Apart from incorporating the definition of “refugee” given in the 1951 Convention, the OAU Convention of 1969 stipulates in Article I(2) that:

«The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.»

This definition is the fruits of the wars of liberation and decolonisation that broke out on the African continent at the end of the 1950s and start of the 1960s. Articles I(4) and I(5) of the OAU Convention of 1969 also contain provisions concerned with cessation and exclusion, which differ in some respects from those of the 1951 Convention.

2- Cartagena Declaration of 1984

At the end of the 1970s and the beginning of the 1980, problems connected with massive displacements of populations due to conflict, civil war, violence and political revolt in a number of States, including Central America, led to the recommendation of Article III(3) of the Cartagena Declaration of 1984, under which:

«[...] the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order. »

Although the Cartagena Declaration is not officially binding, several South American countries have incorporated its principles, including its definition of refugee, into its own legislation and national practices.

REFUGEE STATUS DETERMINATION (RSD)

Under the terms of the 1951 Convention and the 1967 Protocol, RSD, or in other words the identification of refugees, falls to the State in which the applicant submits an application for refugee status recognition. The primary responsibility of States is therefore to determine the status of individuals arriving on their territory. This specifically involves determining if the individual is a refugee under the terms of the 1951 Convention and therefore has the right to international protection.

RSD is therefore understood to mean the procedure by which a government authority or UNHCR seeks to determine if a person, who has submitted an asylum application or expressed his need for international protection in some other way, is effectively a refugee – that is to say, if his situation fulfils the criteria enumerated in the applicable definition of “refugee”.

Whether or not a person is recognised as having assumed the capacity of refugee does not depend on whether he has been recognised as such by his host country or by UNHCR, but instead on whether he fulfils the international conditions in this regard (criteria mentioned above). In other words, the outcome of refugee status recognition is declaratory insofar as it officially recognises and confirms that the person is a refugee.

1- Why is it necessary to conduct RSD?

In order to effectively fulfil their obligations stemming from the 1951 Convention and/or the 1967 Protocol, States must determine who is a refugee. As a result, they must put in place procedures that will allow them to determine whether or not a particular individual corresponds to the definition of refugee stated in the 1951 Convention.

2- Who is responsible for RSD?

- **States**

It is the primary responsibility of the States in which individuals have sought asylum to identify those who fit the definition of refugee and to ensure that refugees are able to avail themselves of international protection and enjoy the rights and privileges associated with refugee status.

For the States concerned, protecting refugees is not simply a question of decorum. State Parties to both the 1951 Convention/1967 Protocol and the OAU Convention of 1969 are bound by these instruments to provide women, men, girls and boys, who fulfil the criteria of the applicable definition of refugee, with the protection guaranteed therein.

The most important obligation is to comply with the principle under which States cannot return a person to a country where his life or freedom is threatened on account of his race, religion, nationality, membership of a particular social group, or political opinions. This is known as the «non-refoulement principle».

Thus, States must normally implement relevant procedures and conduct RSD, particularly if they are signatories of the 1951 Convention/the 1967 Protocol. Paragraph 8 of the 1950 Statute of UNHCR and Article 35 of the 1951 Convention state that UNHCR is responsible for supervising the application of the provisions of the 1951 Convention and of the 1967 Protocol in States that are parties to these instruments. UNHCR exercises its supervisory role both by overseeing the implemented procedures and criteria, and by intervening on behalf of applicants.

The majority of States have provided for the participation of UNHCR, at least in an advisory capacity. Indeed, in certain States, UNHCR effectively participates in the national RSD process. This participation may take various forms according to the circumstances, such as:

- Preparing a case ahead of its examination by the national authority that will determine eligibility (for example, registration, preliminary interview, preparation of the applicant's file and submission to the national authority);
- Voting on the asylum application or participating in the first instance procedure as an observer/adviser;
- Voting on the asylum application or participating in the appeal or review procedure as an observer/adviser;
- Examining decisions of inadmissibility or the rejection of applicants leading to their deportation.

Additionally, in some States that are parties to the 1951 Convention and/or the 1967 Protocol but have not yet introduced national procedures for asylum determination, UNHCR will conduct RSD on behalf of the State.

• **United Nations High Commissioner for Refugees (UNHCR)**

UNHCR is also responsible for providing refugees with international protection and for attempting to find permanent solutions to the problem of refugees. Consequently, it is the only international organisation with a specific mandate to protect refugees at a global level. Pursuant to its 1950 Statute and subsequent resolutions adopted by the United Nations General Assembly and by the Economic and Social Council (ECOSOC),

UNHCR has a mandate to provide international protection and to attempt to find appropriate solutions to the fate of refugees of concern to the agency. Asylum seekers also come under the categories of «persons of concern to UNHCR» (as do repatriates, stateless persons and, under certain circumstances, persons displaced within their own country).

Although States, including those party to the 1951 Convention and/or 1967 Protocol, must normally conduct RSD themselves, under certain circumstances, UNHCR may be required to conduct its own RSD and to establish for itself whether or not certain persons or members of a certain group are refugees, according to its mandate to provide international protection.

In most cases, UNHCR adopts this course based on its 1950 Statute. In practice, the case in point can arise in various contexts, for example:

- In States that are not party to the 1951 Convention/1967 Protocol;
- In States that are party to the 1951 Convention/1967 Protocol but
- Have not yet introduced asylum determination procedures; or
- In which national procedures for asylum determination are evidently inadequate, or where determination is based on an erroneous interpretation of the 1951 Convention;
- As a pre-requisite for the implementation of durable solutions, such as resettlement.

In most cases where UNHCR conducts RSD, the purpose of such an approach is to determine if a particular person is a refugee of concern to UNHCR.

Key point no. 5 **Extended definition of “refugee”**

The definition of refugee contained in the 1950 Statute of UNHCR is almost identical to that of the 1951 Convention.

However, the 1950 Statute no longer fully encompasses UNHCR’s refugee mandate. As a result of the resolutions adopted by the UN General Assembly and ECOSOC, the definition of refugee has been extended in light of UNHCR’s mandate for international protection.

Thus, UNHCR’s authority to provide international protection to refugees currently covers the following two categories of people:

- People who fulfil the eligibility criteria of the refugee statute enumerated in the **1951 Convention/1967 Protocol** which are largely the same as those contained in the **1950 Statute**; and

- People encompassed by the **extended definition of refugee** under UNHCR's mandate, because they are outside their country of origin or country of habitual residence and are unable or unwilling to return there owing to serious and indiscriminate threats to their lives, physical integrity or freedom, as a result of generalised violence or events that seriously disturb public order.

Hence, UNHCR's authority in terms of refugees has been extended to include victims of the indiscriminate effects of armed conflict and other «manmade disasters», such as foreign domination, intervention or occupation or colonialism.

Any decisions taken are also of direct importance in terms of defining the form of protection and assistance afforded by UNHCR to the person concerned. This protection and assistance may take the form of documents issued to certify the person's refugee status, measures taken to reunite families or to facilitate voluntary repatriation, or various kinds of material assistance.

Key point no. 6

United Nations High Commissioner for Refugees (UNHCR): Mission, governance and activities

Founded in 1950, UNHCR began its activities on 1 January 1951, focusing its attention on providing assistance to some 1.2 million refugees who were still living in exile in the wake of the Second World War. Throughout the decades that followed, conflict and persecution continued forcing people to flee their homes in all corners of the world, causing UNHCR to expand its operations in search of solutions to their plight.

Nowadays, UNHCR exercises its protection mandate with the help of more than 6,500 civil servants who provide assistance to more than 19 million people across 116 countries.

Mission:

UNHCR is responsible for collaborating with other countries to protect those who have been uprooted and to find durable solutions in their favour. As well as refugees, UNHCR's protection mandate includes persons of concern to the institution, such as asylum seekers, stateless people, people displaced within their own country and repatriates.

Governance:

In accordance with its 1950 Statute, UNHCR acts under the authority of the United Nations General Assembly and applies the directives of ECOSOC. The institution's work is entirely apolitical and of humanitarian and social nature.

UNHCR is governed by the Executive Committee of the Programme of the United Nations High Commissioner for Refugees (ExCom). ExCom is composed of representatives from countries selected by ECOSOC and was formed of 70 member countries in 2006. The institution serves to approve the programmes and the budget of UNHCR, and its Conclusions in relation to international protection, drawn during its annual sessions in Geneva, are authoritative in the sphere of international protection. Not all members States of ExCom are necessarily signatories of the 1951 Convention or the 1967 Protocol.

International protection includes a range of concrete activities that ensure that all women, men, girls, and boys of concern to UNHCR have equal access to and enjoyment of their rights in accordance with international law. The ultimate goal of these activities is to help them durably rebuild their lives within a reasonable amount of time.

Activities:

Some of the protective activities implemented by UNHCR are as follows:

- Ensuring that asylum seekers and refugees are admitted to and registered by States, and not forced to return to their country of origin (refoulement), where their lives are at risk. Non-refoulement is a fundamental principle of international refugee law, which prohibits refugees from being returned, in any manner whatsoever, to countries or territories where their lives or freedom would be threatened (for more information on non-refoulement, see Chapter 4);
- Determining who is a refugee in accordance with UNHCR's mandate and to assist governments to do the same;
- Ensuring that the human rights of refugees, displaced persons and other persons of concern to UNHCR are respected and protected. In order to assist States to ensure that certain such rights are respected, UNHCR and its partners provide women, men, girls and boys of concern to the institution with these services;
- Recording and meeting the specific protective needs of certain men, women, boys and girls;
- Collaborating with States to find and propose durable solutions for refugees and other people of concern to UNHCR;
- Monitoring how State Parties to the 1951 Convention and/or 1967 Protocol and other conventions relating to statelessness apply these treaties;
- Providing governments, courts and other authorities with advice, and defending the cause of people of concern to them; and
- Assisting States to draft and implement national laws that protect the rights of refugees, people displaced within their own country and other people of concern to the State.

3- What does RSD consist of?

States and UNHCR both perform RSD, on either an individual or a group basis.

- **Individual RSD**

Neither the 1951 Convention nor the 1967 Protocol prescribes a particular RSD procedure to be applied by State Parties.

National legislation defines the institutions and/or authorities concerned, the stages of the asylum procedure and the guarantees of the procedure. Wherever possible, refugee status must be determined on an individual basis, following a detailed examination of the particular situation of the applicant.

- **RSD on a group basis**

Refugee status recognition on a group basis is particularly indicated in the event of a massive influx, where significant numbers of people arrive in search of international protection at such a rate that individual RSD is impossible. In such situations, States and UNHCR often grant refugee status to the members of a particular group *prima facie* (based on the first impression). This method is appropriate if the majority of people in the group arriving may be considered refugees on the basis of objective information regarding the prevailing situation in their country of origin.

When armed conflict in a country triggers a massive exodus of refugees to neighbouring or other countries, combatants may become mixed among the refugees. The presumption of eligibility for refugee status *prima facie* does not include combatants. Active combatants – i.e. those who continue to take an active part in armed conflict – are not eligible for the international protection afforded to refugees. Military activities are incompatible with refugee status.

The situation is different, however, for former combatants. Simply having taken part in hostilities does not automatically exclude a person from availing himself of the international protection afforded to refugees, though former combatants seeking asylum must first of all undergo a procedure to clarify their status. If they arrive during a massive influx, the host State must separate them from refugees. Former combatants may only proceed with asylum procedures once it has been established that they have truly and permanently renounced military activities and are now civilians. Applications submitted by such persons should be examined by means of an individual RSD procedure.

Women, men, girls and boys recognised as refugees following RSD on a group basis enjoy the same status as those granted refugee status on an individual basis. Depending on the context, it may be necessary to put

in place mechanisms that would allow members of a group who do not meet the inclusion criteria of the applicable definition of refugee, or to whom an exclusion clause may be applicable, to be identified.

4- What are the consequences of being recognised as a refugee?

As indicated above, refugees may avail themselves of a certain number of rights and protective and assistive measures that take into account their particular situation. The following sections provide a general overview of the key elements of international protection for refugees.

• Protection against refoulement

A very important point is that refugees are protected against return to a country where they risk suffering from persecution. This is the principle of so-called non-refoulement. Often referred to as the keystone of the international protection of refugees, this principle is explicitly stipulated in Article 33(1) of the 1951 Convention, which states that no State *«shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.»*

Having officially recognised refugee status is not a pre-requisite of protection against refoulement. Given that asylum seekers may be refugees, a well-established principle of international refugee law states that they must not be returned or expelled while their status is being determined.

Exceptions to the non-refoulement principle are defined very stringently and are only permitted during a limited number of circumstances provided for under Article 33(2) of the 1951 Convention, which stipulates that:

«The benefit of [Article 33(1)] may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.»

The conditions under which Article 33(2) may be applicable can only be satisfied if a refugee represents a very serious potential danger to the security of the host country (i.e. is a threat to its constitution, territorial integrity, independence or internal peace) or has been convicted of a particularly serious crime by a final judgement, against which no further appeals may be lodged (e.g. murder, rape or armed burglary), and continues to represent a danger to the host country's community. An exception, provided for under Article 33(2), may be applied by means of procedures that stringently respect procedural guarantees.

However, Article 33(2) of the 1951 Convention does not apply if the expulsion of a refugee would expose him to a significant risk of torture or inhuman or degrading treatment or punishment.

The prohibition of refoulement that could potentially lead to such treatment is an integral part of the prohibition of torture and other forms of ill treatment provided for under Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, Article 7 of the International Covenant on Civil and Political Rights (ICCPR) of 1966 and regional instruments that safeguard human rights. It was promoted to the status of peremptory norm of international law, or *jus cogens*, and, as such, is binding for all States, regardless of whether or not they are parties to the relevant instruments. Moreover, in this regard, it is important to highlight that the non-refoulement provision of the OAU Convention of 1969, which applies to all persons who satisfy the definition of refugee, does not allow for any exceptions.

The non-refoulement principle, as stipulated in Article 33 of the 1951 Convention, has become a norm of customary international law. This means that it is binding even for States that are not party to the 1951 Convention and/or 1967 Protocol.

Under international and regional human rights law, it is also prohibited for States to return a person to a country where he could be exposed to serious violations of other fundamental human rights.

• Other rights and benefits

Apart from protection against refoulement, recognised refugees may avail themselves of a certain number of other rights and benefits. The standards of treatment a refugee can expect from a country of asylum are inspired by a combination of international refugee law and human rights. A number of such rights stem from international instruments on human rights and customary international law. As a consequence, similar standards should be respected both by State Parties to the 1951 Convention and the 1967 Protocol, and by those who are not bound by these instruments. These rights and benefits are as follows:

- Protection against threats to the **physical safety** of refugees in host countries, thus requiring the host country to put in place the necessary measures to protect refugees against criminal violence, particularly where it is motivated by racism or xenophobia, including torture and inhuman or degrading treatment inflicted by officers of the State.
- **Free access to the courts** of the country of asylum.
- Assistance covering the fundamental **material and physical needs** such as food, clothing, housing and medical care. Although it is inevitable for the majority of refugees to depend on the support of others, particularly during the initial stages of their stay in the country of asylum, it is in the host country's interest to facilitate the self-sufficiency of refugees by providing them with access to the labour market and to self-employment.

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- **Freedom of movement**, which refugees must enjoy subject to the same conditions as nationals of the host country, unless a person represents a particular threat to the public order or to public health.
 - Access to an adapted **education** at least to primary level, and recreational activities for refugee children.
 - **Reunification**, with close family members in the country of asylum, as quickly as possible.
 - **Special protective measures for particularly vulnerable refugees**, for example if there is an increased threat of violence to a refugee community owing to the collapse of the normal social structures, or if a refugee community that has fled armed conflict is at risk of being infiltrated by armed groups or exposed to military enlistment, particularly children. Refugee women and young girls are often exposed to an increased risk of sexual and gender-based violence, which also requires the adoption of special measures to ensure their protection.

The capacity of refugees to avail themselves of the rights outlined above, in particular freedom of movement and protection against refoulement, is even greater if they possess proof of identity.

The country of asylum is obliged to issue identity documents to each refugee, unless he is not in possession of a travel document. The 1951 Convention establishes the obligation of the country of asylum to provide refugees with travel documents and describes the form that these documents must take if they are to be recognised by other State Parties to the Convention. The same instrument also stipulates that the relevant government must apply its provisions to refugees on its territory, without discrimination on the grounds of race, religion or country of origin.

• Durable solutions

Recognised refugees also have the right to assistance to find a permanent solution to their situation so that they may lead a normal life. According to the situation in which they find themselves, this search generally takes the course of one of the following three traditional, durable solutions:

- **Voluntary repatriation**: where refugees return to their country of origin of their own free will, in safety and with dignity.
- **Local integration**: a process resulting in the permanent settlement of refugees in the country where they sought asylum.
- **Resettlement**: where refugees are transferred from their country of asylum to a third country that agrees to admit them on a permanent basis.

If no official hierarchy exists between these durable solutions, voluntary repatriation is the solution that most refugees pursue and achieve. In the majority of refugee situations, it is also recognised as the solution favoured by various documents, including the Agenda for Protection and several conclusions adopted by ExCom, which is comprised of 64 States that show a clear interest in refugee issues and whose role involves, among other things,

advising the High Commissioner in the exercise of his functions. Durable solutions can only be successfully implemented if the interested parties – namely the countries concerned and UNHCR – work in partnership.

Key point no.7 **RSD procedures**

- These procedures are necessary for States to be able to properly fulfil their obligations under international refugee law.
- They must be fair and effective, and offer adequate procedural guarantees, in accordance with the norms and principles of international and regional human rights law, including the relevant conclusions adopted by ExCom.

General principles

- The responsibility of establishing the facts during RSD procedures is shared between the applicant and the person responsible for making the final decision, in light of the particular situation of each asylum seeker.
- Asylum seekers are obliged to provide a full and true report of the facts on which their application is based. The adjudicator must provide the applicant with guidance and verify alleged facts using every means available to him.
- The person responsible for making the final decision must evaluate the reliability of any evidence and the credibility of the applicant's declarations. Credibility is established if the applicant has submitted a coherent, plausible application that is congruent with widely known facts and, overall, may therefore be believed.
- Where elements of doubt remain, though, overall, the account given by the applicant is coherent and plausible, the applicant should be given the benefit of the doubt.

Fair and effective asylum procedures

National procedures for individual RSD must include the following essential elements:

- All asylum applications must be examined by means of procedures put in place especially for this purpose. The same procedure should preferably be used to evaluate the requests of persons applying for refugee status or other forms of protection.
- Asylum seekers must be examined by a single central authority, whose staff must possess specialist competencies and knowledge. Asylum applications submitted to other State authorities must be forwarded to the central authority.
- Ideally, all persons submitting an asylum application at the frontier must be admitted into the territory and must be granted the temporary right to remain there until a final judgement has been delivered on their application. Admissibility must not be refused due to reasons associated with the substance of the application or simply because the applicant does not possess personal identity or travel documents.
- Asylum seekers must have access to information on the nature of the procedure and on their rights and obligations in a language that

they understand. They must also be able to contact the UNHCR and other authorities that are able to provide them with advice and/or legal representation. Assistance from qualified and impartial interpreters should be provided where necessary.

- Each application must be evaluated on an individual basis and the procedure must include a personal interview with the person responsible for making the final decision.
- Confidentiality must be respected at all stages of the procedure.
- All applicants must be notified, in writing, of the decision on either the admissibility or the substance of their application.
- All applicants whose applications have been declared inadmissible or have been rejected on the substance must have the right to at least one appeal or full re-examination by an organisation independent of the first-instance adjudicating authority, and the right to remain in the country for the duration of the appeal or re-examination procedure.

Special procedures

- It may be appropriate to expedite the processing procedure for certain asylum application categories, including:
 - Clearly well-founded applications.
 - Clearly unfounded applications – that is, those that do not comply with the eligibility criteria enumerated in the 1951 Convention or other criteria justifying the conferment of asylum.
 - Improper or fraudulent applications – that is, applications completed by persons who there is clear evidence do not require international protection, or involving an element of deception or the intention to mislead others.
- In countries that provide for special procedures to process applications submitted at international airports, it is necessary to ensure that decisions are made by the central authority responsible for asylum and that there are specific procedural guarantees in place.

Special measures for vulnerable applicants

- Women asylum seekers must be questioned by a person specially trained for this purpose. Female staff must be available to conduct interviews and to provide interpretation.
- The procedures for processing asylum applications submitted by separated or unaccompanied minors must provide for special guarantees, as well as the participation of specialists in the procedure and staff specialising in issues affecting minors, for decision-making and interpretation. Applications submitted by minors must be prioritised.
- Applications submitted by elderly applicants must be examined taking into consideration their age, evaluating both the legitimacy of their fear and their credibility.
- Where applicants have mental illnesses, the opinion of a specialist doctor should be requested, if possible, on the nature and extent of the mental illness.

UNHCR'S PROCEDURE FOR REFUGEE STATUS RECOGNITION IN MOROCCO

Morocco acceded to the Geneva Conventions on 7 November 1956 and to their Additional Protocols on 20 April 1971.

According to Moroccan law, the *Bureau des Réfugiés et Apatrides (Office for Refugees and Stateless People, BRA)* is competent to examine asylum applications. However, in the absence of an existing national procedure and the permanent paralysis of the BRA, it is the UNHCR in Rabat that processes applications, in accordance with its mandate.

Anybody in Morocco who regards himself to be a refugee and who may, as a consequence, avail himself of refugee status, must submit his asylum application to UNHCR services in Rabat.

The procedure for registering with UNHCR services in Rabat

The relevant person must present himself at the UNHCR office in Rabat on the days of registration, accompanied by all members of his family, and bring with him all documents in his possession (retaining the original copies).

- Registration form

The applicant will be given a registration form to complete, available in French, English and Arabic. If necessary, a UNHCR official may offer assistance to complete the form.

The information contained in the form concerns the civil registration of vital events, nationality, personal situation and the reasons for leaving the country of origin.

- Registration interview

The asylum seeker will then be received by a UNHCR employee, who will ask him questions related to the information mentioned in the form, during which the applicant may provide additional information concerning his asylum application.

Following the registration procedure:

- If UNHCR considers the reasons motivating the asylum application to correspond to those provided for under the Geneva Conventions or

UNHCR's mandate, the asylum seeker will be issued with an Asylum Seeker Certificate. A protection officer will give the asylum seeker an appointment for an interview, during which he will have the opportunity to provide additional information concerning his application. The Asylum Seeker Certificate is valid for six months and is renewable.

- Otherwise – that is, where the reasons motivating an asylum application are in no way whatsoever consistent with the reasons outlined in the Geneva Conventions or the UNHCR mandate – the application will be rejected and the applicant will have the opportunity to lodge an appeal against the decision within 48 hours. It should be noted that, at this stage, only applications that do not clearly correspond to the definition of refugee status will be dismissed.

Should the contact details of the asylum seeker change, it is important to inform UNHCR of this as soon as possible.

1- The RSD Interview

Once the asylum application has been submitted to UNHCR and the Asylum Seeker Certificate issued, the applicant will be summoned for an interview regarding the grounds of his application. The purpose of this interview is to better understand the reasons that led the applicant to leave his country of origin and why he is fearful of returning there.

Given the importance of the applicant's account in this procedure, and given the decisive nature of the procedure itself (since the RSD process rests, to a large extent, on the personal conviction of the adjudicator), it is important to be as accurate and truthful as possible when recounting facts, locations, dates, the reasons for fearing persecution, the factors triggering departure and details of the journey to Morocco.

It is also necessary to be truthful and coherent. False declarations made during the interview will affect the credibility of the application.

Interpreting services are available during the interview and everything that is said will remain strictly confidential.

During the interview, the asylum seeker may state that he would prefer to be interviewed by a male or a female.

2- The decision of UNHCR

Based on the information provided and the applicant's account, the application is then analysed from a legal perspective and the information verified using various sources of information. UNHCR will then make a decision, which will be delivered to the asylum seeker.

One of two situations may arise:

- If the outcome is positive, UNHCR will not issue a refugee certificate, but a document entitled “To whom it may concern”, which is renewable every 12 months.
- If the outcome is negative, UNHCR will deliver the rejection decision to the applicant, explaining the reasons for this decision and the steps to take in case an appeal is to be lodged.

3- Appeals

An asylum seeker whose application has been rejected in the first instance may lodge an appeal against this decision. In this instance, the applicant must:

- Submit an appeal application to the UNHCR office in Rabat within 30 days.
- Inform UNHCR of any new information or evidence not reported in the first instance.

If it is deemed necessary, UNHCR will invite the asylum seeker to attend its premises for an appeal interview with a different employee from the one who conducted the previous interview. Once a decision has been made concerning the appeal, UNHCR will inform the applicant of the outcome by displaying the decision at the front of its office.

- If the appeal is accepted, UNHCR will provide the asylum seeker with a refugee certificate.
- If the appeal is rejected, the applicant will be informed of final decision and UNHCR will explain the consequences of this decision on the applicant’s situation in Morocco.

Protection provided by UNHCR

All asylum seekers are placed under the protection of UNHCR until a final decision has been made in relation to their application.

Similarly, all persons recognised as refugees are placed under the protection of UNHCR, which also extends to close family members.

Refugees and asylum seekers are protected against expulsion and refoulement in particular. If an asylum seeker or refugee is arrested, it is important that UNHCR is informed of his identity, the place of arrest and the reasons as soon as possible so that the office may react swiftly.

SHORT RESPONSES TO THE MOST COMMONLY RAISED QUESTIONS REGARDING REFUGEES AND ASYLUM SEEKERS

Why is the 1951 Convention relating to the status of refugees so important?

The 1951 Convention was the first international treaty to establish provisions on essential aspects of the lives of refugees. It provides refugees with fundamental rights that are at least equivalent to the liberties granted to foreign nationals in a given country, and in a large number of cases, are equivalent to those enjoyed by nationals of the country. The instrument acknowledges the international dimension of the problem of refugees and the need for international solidarity, particularly in terms of sharing responsibility.

What does the 1951 Convention contain?

The 1951 Convention provides a definition of the term “refugee”, as well as clearly stating the rights and obligations of refugees, such as religious freedom, freedom of movement, the right to education, the right to obtain travel documents, the right to work and their obligation towards their country of asylum. One key provision stipulates that refugees must not be subject to expulsion or refoulement to a country where they have a fear of being persecuted. The Convention also refers to people or groups of people who may not avail themselves of its protection.

What does the 1967 Protocol contain?

The 1967 Protocol removes the geographical and temporal limitations enumerated in the 1951 Convention, whereby refugee status had largely been restricted to European victims of events occurring prior to 1 January 1951.

What is a refugee?

Article 1 of the 1951 Convention defines who is a refugee. A refugee is a person who is outside his country of nationality or country of former habitual residence; who has a fear of being persecuted owing to his race, religion, nationality, membership of a particular social group or political opinions, and who is not able or not willing to avail himself of the protection of this country or to return there as a result of this fear.

What is protection understood to mean?

The responsibility of enforcing the laws of a given country falls to the government of that country. When a government is unwilling or unable to do this, which is often the case during conflict or civil war, people whose fundamental rights are threatened are often forced to flee to another country, where they may be granted refugee status and their rights will be respected.

Who protects refugees?

The protection of refugees is, first and foremost, the responsibility of the government of the host country. State Parties to the 1951 Convention and/or 1967 Protocol are obliged to apply the provisions of these instruments. UNHCR ensures that countries fulfil their obligations and that refugees obtain asylum in good faith and are not returned, against their will, to countries where their lives are at risk. The organisation offers refugees the possibility of starting a new life by helping them to integrate into the country of first asylum, to return to their own country if circumstances so permit, or to settle in a third country.

How is a refugee different from an economic migrant?

In principle, economic migrants leave their countries willingly in search of better living conditions and, should they choose to return there, will continue to enjoy the protection of their government. Refugees, however, are forced to flee from their country in order to escape persecution and cannot safely return there for as long as this threat remains.

Does the 1951 Convention protect people displaced within their own country?

People displaced within their own countries are not specifically protected under this Convention. Refugees are individuals who have crossed a frontier to seek asylum in another country. Displaced individuals, even if they are fleeing their homes for similar reasons, have not left their country and are therefore subject to its laws. Although UNHCR provides assistance to several million such people during certain crises, it cannot assist all 20-25 million displaced people around the world. The issue of determining how best to come to the aid of this category of uprooted people and to whom this task falls is currently at the heart of a great debate within the international community.

Can the 1951 Convention resolve refugee problems?

People become refugees either on an individual basis or during an exodus as a result of political, religious, military or other kinds of problems in their countries of origin. The 1951 Convention was not created to tackle the root of these problems, but instead to ease their consequences by offering their victims international legal protection, various forms of assistance and the means of rebuilding their lives. Protection may contribute to the formation of a general solution, but the drastic rise in the number of refugees in past decades has clearly showed that humanitarian action cannot take the place of political action as a way of resolving or preventing crisis situations.

What are the obligations of refugees?

Refugees are obliged to comply with the laws and regulations of their country of asylum.

Are Parties to the 1951 Convention obliged to grant permanent asylum to all refugees?

The 1951 Convention does not grant automatic or permanent protection. In certain situations, refugees will indefinitely remain in their countries of asylum where they have integrated, whereas in other cases, a person will no longer be considered a refugee if the circumstances under which he obtained refugee status cease to exist. Voluntary repatriation is generally the solution recommended by UNHCR, though only where the situation in the country of origin is such that it would be safe to return there.

Who cannot avail themselves of the protection provided under the 1951 Convention?

Individuals who have committed a crime against peace, a war crime, a crime against humanity or a serious non-political crime outside the country of asylum.

Can a soldier obtain refugee status?

A refugee is a civilian. A former soldier may obtain refugee status but not a person who continues to take part in military activities.

Can countries that have not adopted the 1951 Convention refuse to admit a person in need of international protection into its territory?

The non-refoulement principle, under which no refugee must be returned to a country where his life or freedom is threatened, is part of customary international law, which all States are obliged to observe. This therefore means that no government is authorised to expel a person who, as a result, risks being subjected to a dangerous situation.

What is an “agent of persecution”?

This term refers to a person or organisation – e.g. a government, a group of rebels or other groups – that forces people to flee from their homes. However, the source of persecution is not necessarily a decisive factor in determining if a person may be granted refugee status. What is important is that a person can avail himself of international protection because he cannot be protected in his country of origin.

What is “temporary” understood to mean?

Sometimes, States grant “temporary protection” in case of a mass arrival of refugees, where their asylum services are saturated, as during the conflict in former Yugoslavia at the beginning of the 1990s. This allows people in a desperate situation to be quickly admitted to countries where they will be safe, though with no guarantee of being granted permanent asylum there. Therefore, under certain circumstances, temporary protection serves both governments and asylum seekers, acting only to supplement the various protective measures found in the 1951 Convention, such as the conferment of asylum, and not to replace them.

Are certain countries, such as those in Europe, overwhelmed with asylum applications?

Several countries, including certain European countries, believe themselves to be inundated with asylum applications. It is true that the number of applications has not stopped growing over the past few decades in certain regions of the world, though governments have generally showed only a relative degree of concern. The crux of the problem is that it is often the poorest countries, particularly those in Africa and Asia, that accept the largest number of refugees and for the longest period of time.

Is the simple fact of having adopted the 1951 Convention a factor of encouragement for asylum seekers?

No. Some of the States admitting the largest numbers of refugees are not parties to the 1951 Convention and/or the 1967 Protocol. Geopolitical considerations and family connections are distinctly more decisive when it comes to deciding the fate of refugees.

Do States that adopt the 1951 Convention risk compromising their sovereignty?

Sovereignty is never absolute. International relations involve a level of reasonable and acceptable compromise. Legal instruments in relation to refugees reconcile State interests with protection. The conferment of asylum, for example, is not an integral part of these instruments and remains the prerogative of each government.

Can a country be considered «safe» insofar as it is improbable that it will produce refugees?

No. All asylum applications must be examined, even if they come from countries where there is no persecution a priori. Expedited asylum procedures may be implemented, provided that they are impartial.

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Comisión Española
de **Ayuda al Refugiado**
